

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

**FILED**

**MAR 19 2012**

**JUDGE REBECCA R. PALLMEYER  
UNITED STATES DISTRICT COURT**

UNITED STATES OF AMERICA )

vs. )

JAMES WODNICKI )

No. 10 CR 548

Judge Rebecca R. Pallmeyer

**PLEA AGREEMENT**

1. This Plea Agreement between the United States Attorney for the Northern District of Illinois, PATRICK J. FITZGERALD, and defendant JAMES WODNICKI, and his attorney, COLLEEN DALY, is made pursuant to Rule 11 of the Federal Rules of Criminal Procedure. The parties to this Agreement have agreed upon the following:

**Charge in This Case**

2. The indictment in this case charges defendant with attempting to commit extortion, in violation of Title 18, United States Code, Section 1951.

3. Defendant has read the charge against him contained in the indictment, and that charge has been fully explained to him by his attorney.

4. Defendant fully understands the nature and elements of the crime with which he has been charged.

**Charge to Which Defendant Is Pleading Guilty**

5. By this Plea Agreement, defendant agrees to enter a voluntary plea of guilty to the indictment, which charges defendant with attempting to commit extortion, in violation of Title 18, United States Code, Section 1951.

### **Factual Basis**

6. Defendant will plead guilty because he is in fact guilty of the charge contained in the indictment. In pleading guilty, defendant admits the following facts and that those facts establish his guilt beyond a reasonable doubt:

Beginning on or about July 19, 2006, and continuing through on or about July 20, 2006, at Chicago, in the Northern District of Illinois, defendant JAMES WODNICKI did attempt to commit extortion, which extortion would have obstructed, delayed, and affected commerce, in that he attempted to obtain and obtained property, namely United States currency, from Individual A, with that person's consent induced under color of official right, and by the wrongful use of fear of actual and threatened economic harm, in violation of Title 18 United States Code, Section 1951.

During the course of his employment as a police officer with the Chicago Police Department ("CPD"), defendant received bribe payments from tow truck drivers in exchange for preferential treatment at accident scenes in the 14th District of the CPD. Defendant frequently contacted a tow truck driver via a cellular telephone when an accident occurred in the CPD 14th District in order for the tow truck driver to respond to the scene before other tow companies. If the driver whom defendant had contacted was the first one to arrive, defendant ensured that the driver obtained the tow business. According to CPD general rules and regulations, specifically Rules 45 and 46, CPD officers are prohibited from recommending any commercial or professional service (Rule 45) or advising any person

engaged in a professional or commercial service that any commercial or professional service may be needed (Rule 46). Therefore, these rules prohibit CPD officers from recommending that victims of vehicular accidents utilize specific towing companies, and prohibit the officers from contacting towing businesses regarding potential business at vehicle accident scenes.

Defendant provided vehicle tows to Tow Driver A and CW1 in various ways. On at least one occasion, defendant was assigned to, and in charge of, an accident scene at which he ordered a tow driver from another company to leave the scene. On other occasions, defendant simply telephoned Tow Driver A to inform him of an accident scene, and Tow Driver A would arrive before tow drivers from other companies. In exchange for providing CW1 or Tow Driver A and others with vehicle tows, defendant demanded a payment from them, which payment was related to the number of vehicles defendant had provided for them to tow.

On July 19, 2006, at approximately 1:50 p.m., defendant was assigned to the area of 1735 N. Ashland Avenue, Chicago, Illinois, to handle a scene where a vehicle owner had discovered his/her Toyota Celica, which had previously been reported stolen. While he was at the location with the Toyota Celica, defendant called Tow Driver A to inform him that defendant had a vehicle which Tow Driver A could tow. Tow Driver A arrived at the scene a short time later and defendant arranged for Tow Driver A to tow the Toyota Celica.

On July 20, 2006, Tow Driver A and a confidential source working with the

government (the "CS") met defendant on the street, and defendant referred them to a three-car accident near Fullerton Parkway and Damen Avenue. Tow Driver A assisted defendant at the scene of that accident. Approximately one hour later, Tow Driver A and the CS met defendant in the parking lot of the CPD 14th District station to make a bribe payment to the defendant with money provided by the Federal Bureau of Investigation. During the meeting, the CS had \$150 in his palm, and during a handshake with defendant, CS transferred the \$150 to defendant. Defendant understood that this \$150 bribe was paid to him by Tow Driver A and the CS because defendant had provided Tow Driver A with the tow of the Toyota Celica on July 19, 2006.

Defendant stipulates that the tow truck used by the CS and Tow Driver A was a 2001 GMC Tow Truck that was manufactured in Mexico, specifically at the Assembly plant in Toluca, Mexico. Defendant further stipulates: the vehicle tow lift for this tow truck is a Vulcan/Century, produced by Miller Industries Towing Equipment, 8503 Hilltop Drive, Ooltimah, TN 37363; that the CS maintained vehicle insurance for the CS's tow trucks with Progressive Insurance, which maintains offices and conducts business outside of Illinois; and finally that at times relevant to the events described herein, the CS mailed premium payments to Progressive Insurance from the Chicago, Illinois area to Delaware.

7. Defendant also acknowledges that for the purpose of computing his sentence under the Sentencing Guidelines, the following conduct, to which he stipulates, constitutes relevant conduct under Guideline §1B1.3:

Defendant admits that in his post-arrest statement he stated the following. From approximately 1999 to 2006, defendant accepted bribes from tow truck drivers in return for enabling them to obtain tows of vehicles from accident scenes at which defendant was the responding officer. For the first year, he was paid \$50 per tow, and thereafter he received \$100 per tow. On average, defendant was paid for one car per week during 2000 and 2001. From 2002 through 2006 defendant was paid \$100 per car for approximately one to two cars per week.

Based on the above admissions, and considering that defendant worked approximately 46 weeks per year during those years, the resulting net payments to defendant during 2000 and 2001 were approximately \$9,200, and the resulting in net payments to defendant during 2002 through 2006 were between approximately \$23,000 to \$46,000.

#### **Maximum Statutory Penalties**

8. Defendant understands that the charge to which he is pleading guilty carries the following statutory penalties:

a. A maximum sentence of 20 years' imprisonment. This offense also carries a maximum fine of \$250,000. Defendant further understands that the judge also may impose a term of supervised release of not more than three years.

b. In accord with Title 18, United States Code, Section 3013, defendant will be assessed \$100 on the charge to which he has pled guilty, in addition to any other penalty imposed.

### Sentencing Guidelines Calculations

9. Defendant understands that in imposing sentence the Court will be guided by the United States Sentencing Guidelines. Defendant understands that the Sentencing Guidelines are advisory, not mandatory, but that the Court must consider the Guidelines in determining a reasonable sentence.

10. For purposes of calculating the Sentencing Guidelines, the parties agree on the following points:

a. **Applicable Guidelines.** The Sentencing Guidelines to be considered in this case are those in effect at the time of sentencing. The following statements regarding the calculation of the Sentencing Guidelines are based on the Guidelines Manual currently in effect, namely the November 2011 Guidelines Manual.

b. **Offense Level Calculations.**

i. The base offense level for the charge in Count One of the indictment is 14, pursuant to Guideline §2C1.1(a), because defendant was a public official.

ii. Pursuant to Guideline §2C1.1(b)(1), the offense level is increased by 2 levels because the offense involved more than one attempted extortion.

iii. Pursuant to Guideline §2C1.1(b)(2), the offense level is increased by 6 levels because the value of the payments received by defendant was over \$30,000, pursuant to the table in Guideline §2B1.1. The defendant reserves the right to contest the application of this enhancement.

iv. Pursuant to Guideline §2C1.1(b)(3), the offense level is increased by 4 levels because, as sworn police officer, defendant held a sensitive position.

v. If by the time of sentencing the defendant has clearly demonstrated a recognition and affirmative acceptance of personal responsibility for his criminal conduct within the meaning of USSG § 3E1.1, defendant should receive a 2-level reduction in the offense level. At the present time, given that the defendant is challenging the application of certain guidelines, the government reserves its position on this reduction until the time of sentencing.

vi. Defendant notified the government timely of his intention to enter a plea of guilty, thereby permitting the government to avoid preparing for trial and permitting the Court to allocate its resources efficiently, within the meaning of USSG § 3E1.1(b). Accordingly, at the time of defendant's sentencing hearing, the government will move for an additional 1-level reduction if the Court determines that defendant has demonstrated an affirmative acceptance of responsibility within the meaning of USSG § 3E1.1(a) and defendant's offense level is 16 or greater prior to the operation of USSG § 3E1.1(a).

c. **Criminal History Category.** With regard to determining defendant's criminal history points and criminal history category, based on the facts now known to the government, defendant's criminal history points equal zero and defendant's criminal history category is I.

d. **Anticipated Advisory Sentencing Guidelines Range.** Therefore, based on the facts now known to the government, the anticipated offense level is 23, which, when combined with the anticipated criminal history category of I, results in an anticipated advisory Sentencing Guidelines range of 46 to 57 months' imprisonment, in addition to any supervised release the Court may impose.

e. Defendant and his attorney and the government acknowledge that the above Guideline calculations are preliminary in nature, and are non-binding predictions upon which neither party is entitled to rely. Defendant understands that further review of the facts or applicable legal principles may lead the government to conclude that different or additional Guideline provisions apply in this case. Defendant understands that the Probation Office will conduct its own investigation and that the Court ultimately determines the facts and law relevant to sentencing, and that the Court's determinations govern the final Guideline calculation. Accordingly, the validity of this Agreement is not contingent upon the probation officer's or the Court's concurrence with the above calculations, and defendant shall not have a right to withdraw his plea on the basis of the Court's rejection of these calculations.

f. Both parties expressly acknowledge that this Agreement is not governed by Fed.R.Crim.P.11(c)(1)(B), and that errors in applying or interpreting any of the Sentencing Guidelines may be corrected by either party prior to sentencing. The parties may correct these errors either by stipulation or by a statement to the Probation Office or the Court, setting forth the disagreement regarding the applicable provisions of the Guidelines.



The validity of this Agreement will not be affected by such corrections, and defendant shall not have a right to withdraw his plea, nor the government the right to vacate this Agreement, on the basis of such corrections.

**Agreements Relating to Sentencing**

11. Each party is free to recommend whatever sentence it deems appropriate.

12. It is understood by the parties that the sentencing judge is neither a party to nor bound by this Agreement and may impose a sentence up to the maximum penalties as set forth above. Defendant further acknowledges that if the Court does not accept the sentencing recommendation of the parties, defendant will have no right to withdraw his guilty plea.

13. The parties further agree, pursuant to Title 18, United States Code, Section 3583(d), that the sentence to be imposed by the Court shall include, as a condition of any term of supervised release or probation imposed in this case, a requirement that defendant repay the United States \$150 as compensation for government funds that defendant received during the investigation of the case.

14. Defendant agrees to pay the special assessment of \$100 at the time of sentencing with a cashier's check or money order payable to the Clerk of the U.S. District Court.

## Acknowledgments and Waivers Regarding Plea of Guilty

### **Nature of Agreement**

15. This Agreement is entirely voluntary and represents the entire agreement between the United States Attorney and defendant regarding defendant's criminal liability in case 10 CR 548.

16. This Agreement concerns criminal liability only. Except as expressly set forth in this Agreement, nothing herein shall constitute a limitation, waiver, or release by the United States or any of its agencies of any administrative or judicial civil claim, demand, or cause of action it may have against defendant or any other person or entity. The obligations of this Agreement are limited to the United States Attorney's Office for the Northern District of Illinois and cannot bind any other federal, state, or local prosecuting, administrative, or regulatory authorities, except as expressly set forth in this Agreement.

### **Waiver of Rights**

17. Defendant understands that by pleading guilty he surrenders certain rights, including the following:

a. **Trial rights.** Defendant has the right to persist in a plea of not guilty to the charge against him, and if he does, he would have the right to a public and speedy trial.

i. The trial could be either a jury trial or a trial by the judge sitting without a jury. However, in order that the trial be conducted by the judge sitting without a

jury, defendant, the government, and the judge all must agree that the trial be conducted by the judge without a jury.

ii. If the trial is a jury trial, the jury would be composed of twelve citizens from the district, selected at random. Defendant and his attorney would participate in choosing the jury by requesting that the Court remove prospective jurors for cause where actual bias or other disqualification is shown, or by removing prospective jurors without cause by exercising peremptory challenges.

iii. If the trial is a jury trial, the jury would be instructed that defendant is presumed innocent, that the government has the burden of proving defendant guilty beyond a reasonable doubt, and that the jury could not convict him unless, after hearing all the evidence, it was persuaded of his guilt beyond a reasonable doubt. The jury would have to agree unanimously before it could return a verdict of guilty or not guilty.

iv. If the trial is held by the judge without a jury, the judge would find the facts and determine, after hearing all the evidence, whether or not the judge was persuaded that the government had established defendant's guilt beyond a reasonable doubt.

v. At a trial, whether by a jury or a judge, the government would be required to present its witnesses and other evidence against defendant. Defendant would be able to confront those government witnesses and his attorney would be able to cross-examine them.

vi. At a trial, defendant could present witnesses and other evidence in his own behalf. If the witnesses for defendant would not appear voluntarily, he could require their attendance through the subpoena power of the Court. A defendant is not required to present any evidence.

vii. At a trial, defendant would have a privilege against self-incrimination so that he could decline to testify, and no inference of guilt could be drawn from his refusal to testify. If defendant desired to do so, he could testify in his own behalf.

viii. With respect to forfeiture, defendant understands that if the case were tried before a jury, he would have a right to retain the jury to determine whether the government had established the requisite nexus between defendant's offense and any specific property alleged to be subject to forfeiture.

b. **Appellate rights.** Defendant further understands he is waiving all appellate issues that might have been available if he had exercised his right to trial, and may only appeal the validity of this plea of guilty and the sentence imposed. Defendant understands that any appeal must be filed within 14 calendar days of the entry of the judgment of conviction.

c. Defendant understands that by pleading guilty he is waiving all the rights set forth in the prior paragraphs, with the exception of the appellate rights specifically preserved above. Defendant's attorney has explained those rights to him, and the consequences of his waiver of those rights.

### **Presentence Investigation Report/Post-Sentence Supervision**

18. Defendant understands that the United States Attorney's Office in its submission to the Probation Office as part of the Pre-Sentence Report and at sentencing shall fully apprise the District Court and the Probation Office of the nature, scope, and extent of defendant's conduct regarding the charge against him, and related matters. The government will make known all matters in aggravation and mitigation relevant to sentencing.

19. Defendant agrees to truthfully and completely execute a Financial Statement (with supporting documentation) prior to sentencing, to be provided to and shared among the Court, the Probation Office, and the United States Attorney's Office regarding all details of his financial circumstances, including his recent income tax returns as specified by the probation officer. Defendant understands that providing false or incomplete information, or refusing to provide this information, may be used as a basis for denial of a reduction for acceptance of responsibility pursuant to Guideline § 3E1.1 and enhancement of his sentence for obstruction of justice under Guideline § 3C1.1, and may be prosecuted as a violation of Title 18, United States Code, Section 1001 or as a contempt of the Court.

20. For the purpose of monitoring defendant's compliance with his obligations to pay a fine during any term of supervised release or probation to which defendant is sentenced, defendant further consents to the disclosure by the IRS to the Probation Office and the United States Attorney's Office of defendant's individual income tax returns (together with extensions, correspondence, and other tax information) filed subsequent to

defendant's sentencing, to and including the final year of any period of supervised release or probation to which defendant is sentenced. Defendant also agrees that a certified copy of this Agreement shall be sufficient evidence of defendant's request to the IRS to disclose the returns and return information, as provided for in Title 26, United States Code, Section 6103(b).

#### **Other Terms**

21. Defendant agrees to cooperate with the United States Attorney's Office in collecting any unpaid fine for which defendant is liable, including providing financial statements and supporting records as requested by the United States Attorney's Office.

22. Defendant understands that the government has the right to seek defendant's truthful testimony before a grand jury or a district court.

#### **Conclusion**

23. Defendant understands that this Agreement will be filed with the Court, will become a matter of public record, and may be disclosed to any person.

24. Defendant understands that his compliance with each part of this Agreement extends throughout the period of his sentence, and failure to abide by any term of the Agreement is a violation of the Agreement. Defendant further understands that in the event he violates this Agreement, the government, at its option, may move to vacate the Agreement, rendering it null and void, and thereafter prosecute defendant not subject to any of the limits set forth in this Agreement, or may move to resentence defendant or require

defendant's specific performance of this Agreement. Defendant understands and agrees that in the event that the Court permits defendant to withdraw from this Agreement, or defendant breaches any of its terms and the government elects to void the Agreement and prosecute defendant, any prosecutions that are not time-barred by the applicable statute of limitations on the date of the signing of this Agreement may be commenced against defendant in accordance with this paragraph, notwithstanding the expiration of the statute of limitations between the signing of this Agreement and the commencement of such prosecutions.

25. Should the judge refuse to accept defendant's plea of guilty, this Agreement shall become null and void and neither party will be bound to it.

26. Defendant and his attorney acknowledge that no threats, promises, or representations have been made, nor agreements reached, other than those set forth in this Agreement, to cause defendant to plead guilty. Defendant acknowledges that he has read this Agreement and carefully reviewed each provision with his attorney. Defendant further acknowledges that he understands and voluntarily accepts each and every term and condition of this Agreement.

AGREED THIS DATE: March 19, 2012

Patrick J. Fitzgerald  
PATRICK J. FITZGERALD  
United States Attorney by LS Barrella

James Wodnicki  
JAMES WODNICKI  
Defendant

Michael T. Donovan  
MICHAEL T. DONOVAN  
Assistant U.S. Attorney

Colleen R. Daly  
COLLEEN DALY  
Attorney for Defendant